Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. _____

In The
Supreme Court of the United States

JOHN T. NAMEY, JR.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI
with Appendix

*JOHN B. GIBBONS
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Counsel of Record

July, 2004

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QUESTIONS PRESENTED

1. **Whether Title 18, section 228 is unconstitutionally vague in that the term "resides" is not defined in the statute and does not give fair warning of a possible violation.**

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OPINION BELOW

The Sixth Circuit Court of Appeals filed its decision with the Clerk of Courts on April 15, 2004. The decision was published at 2004 Fed. App 0104(P) (Apx. A).

JURISDICTION

The Sixth Circuit Court of Appeals filed its decision with the clerk on April 15, 2004 (Apx. A). This Court has jurisdiction under 28 U.S.C. section 1254 to review the circuit court's decision on a writ of certiorari.

STATUTORY PROVISIONS INVOLVED

18 U.S.C. section 228 provides that any person who willfully fails to pay a support obligation with respect to a child who resides in another state if the obligation is unpaid for a designated period of time and is greater than a designated amount is eligible for prosecution and punishment in a United States District Court.

STATEMENT OF FACTS

John Namey was convicted by a jury in the District Court of eight counts alleging violations of 18 U.S.C. section 228(a) for the "willful failure to pay a child support obligation with respect to a child who resides in another state" (Apx. C). Namey filed a notice of appeal challenging his conviction and sentence of twenty months of incarceration with the Court of Appeals for The Sixth Circuit. The convictions were affirmed. As Namey has completed his term of incarceration when his appeal was scheduled for oral argument, the court found the sentencing enhancement issues to be moot. However, the Court of Appeals found that the assignments of error challenging certain sentencing enhancement issues to be without merit.

This case arose out of a divorce proceeding in the Court of Common Pleas for Ashtabula County, Ohio, Division of Domestic Relations. The defendant's former wife, Pamela Lancaster, M.D. brought a number of post decree motions seeking payment of back child support which arose out of the initial divorce decree. John Namey had previously lost his license to practice medicine in the State of Ohio and had fallen behind in the payment of court ordered child support payments for the couple's three children. John Namey had previously maintained a medical practice with his former wife in Jefferson, Ohio. A number of hearings were

conducted in the Ashtabula County Common Pleas Court regarding Namey's failure to make complete child support payments. John Namey and his domestic relations attorney always cooperated with the state court domestic relations process and made periodic payments on the accumulated arrearage. At a point in time in those proceedings, Namey and his former wife entered into a settlement agreement whereby the arrearage would be paid from the proceeds of the sale of Namey's prior residence and office in Jefferson, Ohio. Despite the on going state domestic relations proceedings, the State of Ohio officials were of the belief that Namey had moved to his parent's home in Ferrell, Pennsylvania. In fact, Namey had temporarily moved across the Ohio line to his parent's home in Pennsylvania to care for his elderly mother who had a host of medical problems. Namey continued to drive the short distance into Ashtabula County, Ohio to visit his children. He continued to own real estate in Jefferson, Ohio, maintain a bank account and maintained voting residence in the State of Ohio. Namey continued to maintain a mailing address in Ohio and still had an Ohio Drivers license. During the subject time frame, Namey made continuing efforts to regain his Ohio medical license. Namey was occupied on a almost full-time basis in caring for his elderly parents.

The figures used to set the child support obligation were based upon "imputed" income as Namey was not working. The Ohio authorities made no effort to use the Interstate Compact to obtain enforcement of child support judgments in the State of Ohio or Pennsylvania. Nor did the State of Ohio or his ex-wife attempt to collect on Namey's bank accounts in Ohio or foreclose on real property in Ashtabula County to collect the child support arrearage. Instead, the State brought the matter to the federal authorities for prosecution.

At trial in the United States District Court the government went to great lengths in an attempt to prove that Namey had sufficient funds, or had access to funds, to pay off the entire arrearage. Moreover, the government went to great lengths to establish that Namey had permanently relocated to the State of Pennsylvania. There was no evidence that Namey moved in order to thwart the collection of his child support obligations.

REASONS FOR GRANTING THE PETITION

1. WHETHER TITLE 18, SECTION 228 IS UNCONSTITUTIONALLY VAGUE IN THAT THE TERM "RESIDES" IS NOT DEFINED IN THE STATUTE AND DOES NOT GIVE FAIR WARNING OF A POSSIBLE VIOLATION.

In the district court, Namey moved to dismiss the counts of the indictment on the basis that the statute, 18 U.S.C., section 228 was unconstitutional on its face because of the "vagueness doctrine". The statute criminalizes the failure to pay a child support obligation for a child who "resides" in another state. The term "resides" in not defined in the statute and is therefore unconstitutionally vague. The statute does not provide adequate notice of what conduct is prohibited by the statute. The subject statute does not contain a clear and readily comprehensible statement that would allow an ordinary person to understand the conduct that it forbids. The language of this statute lends itself to arbitrary and discriminatory enforcement *Kolender v. Lawson*, 461 U.S. 352, 75 L.Ed. 2d 903, 103 S. Ct. 1855 (1983).

Constitutional challenges based on vagueness, not involving the first amendment, must be examined in light of the unique facts of the case presented. *United States v. Nichols*, (1996, U.S.D.C. So. Dist of New York) 928 F.Supp 302; 1996 U.S. Dist. LEXIS 7541.

The trial court overruled the defendant's motion by referring to the definition of "reside" as found in the standard dictionary and as defined in Black's Law Dictionary. Moreover, the court used the standard definition from a legal dictionary to instruct the jury on definition of "resides".

A criminal law can be invalidated for vagueness for one of two reasons. First, the statute may not provide the kind of notice which would enable "ordinary people" to understand what conduct it prohibits; second, it may authorize and even encourage arbitrary enforcement. *City of Chicago v. Morales*, 572 U.S. 41, 56 (1999).

In the vast majority of prosecutions brought in federal court pursuant to this statute, "residency" is not an issue as the accused has typically picked up and moved to another state with the specific intention of avoiding a child support obligation. The issue of residency was pivotal in this case. In this instance Namey became involved in divorce proceeding in the Court of Common Pleas in Ashtabula County, Ohio. He hired an attorney and the parties participated willingly in the initial divorce proceedings and in multiple post judgment proceedings concerning the enforcement of child support orders in the Domestic Relations Division of the court. There was never an attempt by Namey to avoid the jurisdiction of the Ohio Domestic Relations Court. He always held out hope and went to great lengths to regain his privilege to practice

medicine in the State of Ohio. He continued to maintained his combined office/apartment in Jefferson, Ohio. For years he lived in the apartment in Jefferson and used the apartment for visitation purposes. Namey never abandoned his children and participated in continuing visitation with them in Ashtabula County, Ohio. He maintained a checking account at a bank in Ashtabula County, Ohio. When his parents became ill in Farrell, Pennsylvania, he relocated temporarily to the next county over, Mercer County, Pennsylvania to live and care for them. He himself testified that his relocation to Farrell, Pennsylvania was, at most, temporary.

It is apparent, under all of the facts and circumstances found in the record below, that the failure of the statute to define the term "resides" led to a arbitrary result and the trial.

CONCLUSION

John Namey respectfully moves this Court to grant the Writ of Certiorari.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

OPINION, FILED APRIL 15, 2004

A-1 through A-10

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 206

ELECTRONIC CITATION:
2004 FED App. 0104P (6th Cir.)
File Name: 04a0104p.06

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
April 15, 2004
Leonard Green,
Clerk

UNITED STATES OF AMERICA,
Plaintiff - Appellee,

v. **Nº. 02-4100**

JOHN T. NAMEY, JR.,
Defendant - Appellant.

Appeal from the United States District Court
for the Northern District of Ohio at Cleveland.
No. 01-00541—Donald C. Nugent, District Judge.

Argued: March 17, 2004
Decided and Filed: April 15, 2004

Before: **ROGERS** and **COOK**, Circuit Judges;
SCHWARZER, Senior District Judge.*

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*The Honorable William W Schwarzer, Senior United States District Judge for the Northern District of California, sitting by designation.

COUNSEL

ARGUED: John B. Gibbons, Cleveland, Ohio, for Appellant.
Phillip J. Tripi, ASSISTANT UNITED STATES ATTORNEY, Cleveland, Ohio, for Appellee.

ON BRIEF: John B. Gibbons, John J. Gill, Cleveland, Ohio, for Appellant.
Phillip J. Tripi, ASSISTANT UNITED STATES ATTORNEY, Cleveland, Ohio, for Appellee.

OPINION

WILLIAM W **SCHWARZER**, Senior District Judge. John T. Namey, Jr., appeals his conviction on eight counts of violating 18 U.S.C. § 228(a) for "willfully fail[ing] to pay a support obligation with respect to a child who resides in another State."[1] We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

[1]Namey also appealed several aspects of the district court's sentencing decision. Because Namey is being released from custody in April 2004, those issues are moot. However, we find Namey's challenges are without merit. *United States v. Delgado*, 350 F.3d 520, 524 n.4 (6th Cir. 2003).

FACTUAL AND PROCEDURAL HISTORY

Namey and his former wife, Pamela Lancaster, were divorced in May 1992; Lancaster was awarded custody of the couple's three children and Namey was ordered to pay them $201 per week in child support. Following the divorce, Namey moved his belongings to property he owned on East Jefferson Street in Ashtabula, Ohio ("the Jefferson property"). He lived and worked at this address for several years. Namey, a practicing physician, had his medical license suspended in 1994 and subsequently revoked in 1998.

In 1995, Namey began commuting periodically to Farrell, Pennsylvania to care for his ailing parents. In or around 1997, Namey moved to Farrell on a more permanent basis. In 1999, he entered into a land contract to sell the Jefferson property and received a down payment. When the buyer defaulted, he entered into a new sales contract under which he received payments. Namey moved all of the furniture from the Jefferson property to Pennsylvania.

From 1992 to 1999, Namey carried on a romantic relationship with JoAnna Dunford. He gave Dunford lavish gifts, took her on trips, and provided her with living expenses. Namey had power of attorney over his parents' assets, and at times used the money for personal purposes.

In 1995, an Ohio court found that Namey owed $5,577.33 in past-due child support. Namey did not pay that amount, nor any other child support, until 1998, despite the efforts of the Ashtabula County Child Support Agency. A state civil court found on several occasions that Namey was

deliberately avoiding employment and it increased his monthly obligation to $694. In 1998, Namey made several "purge" payments to avoid jail sentences threatened in state contempt orders.

Namey was indicted on the federal charge in November 2001. The indictment alleged that Namey owed almost $40,000 in unpaid child support for the period September 23, 1997, to April 2, 2001, in violation of 18 U.S.C. § 228(a). At the close of the prosecution's case at trial, Namey moved for acquittal under Federal Rule of Criminal Procedure 29. The court denied the motion and the jury convicted on all counts. Namey timely appealed.

DISCUSSION

I.

Namey's first contention is that the statute is unconstitutionally vague and has led to arbitrary enforcement. He argues that the failure of the statute to define "resides" led to an arbitrary result, pointing to evidence of his continued economic and familial ties to Ohio. We review de novo the legal question whether a criminal statute is unconstitutionally vague. *United States v. Hill*, 167 F.3d 1055, 1063 (6th Cir. 1999).

When the common meaning of a word provides adequate notice of the prohibited conduct, the statute's failure to define the term will not render the statute void for vagueness. *United States v. Haun*, 90 F.3d 1096, 1101 (6th Cir. 1996). Where a term "has a commonly accepted meaning,

an ordinary person would be able to recognize whether the conduct in question is criminal." *Id.* The term "reside" has a commonly accepted meaning. Dictionaries define "reside" as "[t]o live in a place for a permanent or extended time," Webster's II New College Dictionary 943 (2001), or to "[l]ive, dwell . . . to have a settled abode for a time . . . ." Black's Law Dictionary (5th ed. 1979). An ordinary person would understand that a person resides where the person regularly lives or has a home as opposed to where the person might visit or vacation.

Namey argues that the term "reside" may have two separate meanings, with one equating to the definition of residence and the other equating to "domicile." The argument is without merit. We have made it clear that residence and domicile are distinct concepts:

> Generally, an individual's "domicile" is his "true, fixed, and permanent home and principal establishment." It is the place to which he returns whenever he is absent. "Residence," in contrast, requires both physical presence and an intention to remain some indefinite period of time, but not necessarily permanently. Thus, domicile is an individual's permanent place of abode where he need not be physically present, and residence is where the individual is physically present much of the time. An individual consequently may have several residences, but only one domicile.

Eastman v. Univ. of Michigan, 30 F.3d 670, 672-73 (6th Cir. 1994) (citations omitted).

Nothing in the statute or its legislative history suggests that Congress intended that the prosecution must prove a defendant's domicile. The House Judiciary Committee report accompanying the bill that became 18 U.S.C. § 228 reflects Congress's broad purpose to address the problem of collection of child support payments "involv[ing] children whose non-custodial parent *lives* in a state different from the child." H.R. Rep. No. 102-771, at 5-6 (1992) (quoted in *United States v. Faasse*, 265 F.3d 475, 485 (6th Cir. 2001)) (emphasis added); *see also* H.R. 1241, 102d Cong., Statement of Summary and Purpose (1992) (stating that H.R. 1241, which became § 228, was intended to "address[] the growing problem of interstate enforcement of child support."). Congress sought to deal with child support evaders who flee across state lines because "interstate extradition and enforcement . . . remains a tedious, cumbersome and slow method of collection." H.R. 1241, 102d Cong., Statement of Summary and Purpose (1992).

> The House Judiciary Committee, which authored a report accompanying the bill that became 18 U.S.C. § 228, stated that the Committee had found that interstate collection of child support was "the most difficult to enforce" and accounted for an "unacceptably high" deficit in child support payments. H.R. Rep. No. 102-771, at 5-6 (1992). According to the report, approximately one-third of child support cases involve children whose non-custodial parent lives in a state different from the child and whose custodial parent must therefore rely on interstate payments of child support. Among this group relying on interstate payment, fifty-seven percent of the custodial parents reported receiving child

> support payments "only occasionally, seldom or never." *Id.* at 5. After noting that "at least 42 states have made willful failure to pay child support a crime," the report concluded that "the ability of those states to enforce such laws outside their own boundaries is severely limited." *Id.* at 5-6.

Faasse, 265 F.3d at 485; *see also United States v. H.*, No. 01CR0457, 2001 WL 1646465 at *8-9 (E.D.N.Y. Dec. 17, 2001). One Congressman characterized the bill as making "it a crime for a parent to cross state lines in order to avoid making court-ordered child support payments." 138 Cong. Rec. H7326 (1992). Another described the bill as remedying the problem of "parents who make a mockery of state law by fleeing across state lines to avoid enforcement actions by State courts and child support agencies." *Id.* The concerns expressed in the legislative record have little to do with the parent's intent to make the new state his or her domicile or permanent home—rather, it is the prolonged *absence* from the child's home state that concerned Congress. A parent who dwells, but is not domiciled, in a different state from his children is nonetheless absent from the child's state, and enforcement presents difficulties. Given Congress's concern with enforcement, it would make no sense to read the statute as imposing the strict domicile test, which excludes parents who merely reside in another state but present the same enforcement difficulties as if they were domiciled there.

In *H.*, on which Namey relies, the district court interpreted § 228 as "requiring domicile, not mere residence, in another state when the parent responsible for payments leaves the state of the child's domicile temporarily and

without changing his domicile from that of the child." 2001 WL 1646465 at *10. The court reasoned that it seemed unlikely that parents who maintain their domicile in the same state as does the child but a residence elsewhere would fill the description of persons identified as the targets of the statute, i.e., persons against whom support orders are difficult to enforce. We are not persuaded by this reasoning. Aside from the fact that it ignores the plain language of the statute, it substantially undermines its effectiveness. Under the *H.* court's reading, a non-custodial defaulting parent long absent from the state of his child's residence would avoid prosecution unless it were proved that he intended to remain permanently in another state. There is no evidence that this is what Congress intended.

II.

Namey's second assignment of error is that the district court erred in instructing the jury on the issue of residence.

The district court instructed that

> Reside means to live, dwell, abide, sojourn, stay, remain, or lodge. To settle oneself in a place, to be stationed, to remain or stay, to have a settled abode for a time . . . . A person may reside in more than one state at one time. If you find that the defendant resided in more than one state during the period of this count of the indictment, and one of such states was the same state his children resided, you may find that the government has not proved this element beyond a reasonable doubt.

Namey himself proposed the instruction of which he now complains. Under the doctrine of invited error, a party may not complain on appeal of errors he himself invited. *United States v. Barrow*, 118 F.3d 482, 490 (6th Cir. 1997). Even if the doctrine were not to apply here, however, our review is for plain error because Namey failed to object to the instruction at trial. *United States v. Jones*, 108 F.3d 668, 670 (6th Cir. 1997); Fed R. Crim. P. 52(b).

Namey argues that the instruction was error because he was domiciled in Ohio and thus it was unclear whether the government proved that he resided in a state different from his children. For the reasons discussed above, the instruction correctly defined "resides" for purposes of § 228(a) as residence rather than domicile.[2] And there was sufficient evidence for the jury to find that Namey resided outside of Ohio. We find no error.

III.

In his third assignment of error, Namey contends that the district court erred in failing to grant his Rule 29 motion. He argues that state remedies remained available for

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[2]We express no opinion as to wether § 228(a) requires "complete diversity" of residence–i.e., whether a defendant who resides in both the state where his child resides and another state can be convicted under the statute. We note that any error in the district court's instruction on this point inured to Namey's benefit, as the jury was informed that the statute requires complete diversity.

enforcement of the support orders but were ignored even though he was available for service of process in Ohio. Thus, he did not fall within the class at whom the statute was aimed: "hard-core" parents who flagrantly refuse to pay and against whom traditional extradition procedures would have failed.

We review the district court's denial of a motion for acquittal de novo, but we must affirm its decision if the evidence, viewed in the light most favorable to the government, would allow a rational trier of fact to find the defendant guilty beyond a reasonable doubt. *United States v. Nash*, 175 F.3d 429, 433 (6th Cir. 1999). The elements of a § 228 offense are: "(1) a willful (2) failure to pay (3) a past due support obligation, defined as 'any amount . . . determined under a court order or an order of an administrative process pursuant to the law of a state to be due . . . ,' (4) with respect to a child who resides in another state." *United States v. Johnson*, 114 F.3d 476, 482 (4th Cir. 1997). There was sufficient evidence for the jury to find these elements beyond a reasonable doubt. The statute does not require proof that the defendant be a "hard-core" offender.

CONCLUSION

For the reasons stated, Namey's conviction is **AFFIRMED.**

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JUDGMENT, FILED APRIL 15, 2004

B-1 through B-1

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nº. 02-4100

UNITED STATES OF AMERICA,
Plaintiff - Appellee,

v.

JOHN T. NAMEY, JR.,
Defendant - Appellant.

Before: ROGERS and COOK, Circuit Judges;
SCHWARZER, Senior District Judge.

JUDGMENT

On Appeal from the United States District Court
for the Northern District of Ohio at Cleveland

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION WHEREOF, it is ORDERED that the conviction of defendant John T. Namey is **AFFIRMED**.

ENTERED BY ORDER OF THE COURT
/s/ Leonard Green, Clerk
Leonard Green, Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

JUDGMENT, FILED SEPTEMBER 19, 2002

C-1 through C-18

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,
v.
JOHN THOMAS NAMEY, JR.

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)
Case Number: 1:01 CR 541-001

Counsel for Defendant: **Edward G. Bryan, Esq.**
Counsel for The United States: **Phillip J. Tripi Esq**
Court Reporter: **Maureen Povinelli**

THE DEFENDANT:

pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☒ **Was found guilty on count(s) Count One, Two, Three, Four, Five, Six, Seven and Eight of the Indictment after a plea of not guilty.**

Title & Section Numbers	Nature of Offense	Date Offense Concluded	Count
18 U.S.C. § 228	Failure to Pay Child Support Obligation One Year	02/09/98	One and Two
18 U.S.C. § 228(a)(3A)	Failure to Pay Child Support Obligation Two Years	07/09/98	Three through Eight

The defendant is sentenced as provided in pages 2 through 5 Of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The Defendant has been found not guilty on count(s)

☐ Count(s) (Is)(are) dismissed on the motion of the United States

IT IS FURTHER ORDERED that the defendant shall notify the Unites States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by the judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and the United States attorney of any material change in the defendant's economic circumstances.

Defendant's Soc. Sec. No.: **163-42-3600**

Defendant's Date of Birth: **03/12/50**
Defendant's USM Number: **20025-068**

Defendant's Residence Address:
1405 Roemer Boulevard
Farrell, PA 16121

Defendant's Mailing Address:
1405 Roemer Boulevard
Farrell, PA 16121

September 19, 2002
Date of Imposition of Judgment

/s/ Donald C. Nugent
Signature of Judicial Officer

Donald C. Nugent
United States District Judge

Date: 09/19/02

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total of twenty (20) months.

☒ **The Court makes the following recommendations to the Bureau of Prisons**: The defendant shall self-surrender as designated.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district.

- ☐ At _____ a.m/p.m on _____
- ☐ as notified by the United States Marshal.
- ☐ The defendant shall continue under the terms and conditions of his/her present bond pending surrender to the United States Marshal.

☒ **The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons**:

- ☐ before 2:00 p.m. on the date indicated as notified by the United States Marshal.
- ☐ Before 2:00 p.m. on
- ☒ **as notified by the United States Marshal.**

☐ As notified by the Probation or Pretrial Services Office.

☒ **The defendant shall continue under the terms and conditions of his/her present bond pending surrender to the institution.** The defendant shall have no contact with his ex-wife, except for custodial arrangements.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ To_____ at_____, with a certified copy of this judgment.

_____

UNITED STATES MARSHAL

By_____

Deputy U.S. Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of two years, with the usual conditions of pretrial supervision to include an out patient mental health program and/or an alcohol/drug treatment program to include drug testing as directed.

The defendant shall report to the probation office in the district in which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

Unless otherwise stated in this Judgment, the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☒ **The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable)**

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

☒ **The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).**

☒ **The defendant shall also comply with the additional conditions on the attached page.**

STANDARD CONDITIONS OF SUPERVISION

1) The defendant shall not leave the judicial district without permission of the court or probation officer;

2) The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) The defendant shall support his or her dependents and meet other family responsibilities;

5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) The defendant shall permit a probation officer to visit him or her at anytime at home or elsewhere and shall permit confiscation of a contraband observed in plain view of the probation officer;

11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) As directed by the probation officer, the defendant shall notify third parties of rick that my be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

X The defendant shall provide the probation office access to any requested financial information.

X The defendant shall not incur new credit charges or open additional lines of credit without the approval of the Probation Officer unless the defendant is in compliance with the payment schedule.

___ The defendant shall reside in a community treatment center, halfway house, or similar facility for a period of _____ Days/months to begin not later than _____. (Work/medical release privileges granted).

___ The defendant shall reside and participate in a residential drug treatment program as instructed by the Probation Officer, until discharged by the facility and as approved by your Probation Officer.

___ The defendant shall participate in, and successfully complete, a cognitive restructuring program conducted by the U.S. Probation Office, as instructed by your Probation Officer.

___ The defendant shall participate in the Home Confinement Program with Electronic Monitoring for a period of ____ Days/months beginning no later than _____ calendar days from sentencing.
You are required to remain in your residence unless you are given permission in advance by your Probation Officer to be elsewhere. You may leave your residence to work, to receive medical treatment and to attend religious services. You shall wear an electronic monitoring device, follow electronic monitoring procedures and submit to random drug/alcohol tests as specified by the Probation Officer.

___ The defendant shall be required to pay the cost of the Home Confinement Program as directed by the Probation Officer.

___ The defendant is not required to pay the costs associated with the Home Confinement Program.

___ The defendant shall participate in the Home Confinement Program without electronic monitoring for a period of _____ Days/months beginning no later than _____ Days from sentencing.
You will be required to remain in your residence unless you are given permission in advance by your Probation Officer to be elsewhere. You may leave your residence to work, to receive medical treatment and to attend religious services. You shall follow Home Confinement Procedures and submit to random drug/alcohol tests as specified by the Probation Officer.

— The defendant may participate in the Earned Leave Program under terms set by the Probation Officer.

X The defendant shall participate in an outpatient program approved by the U.S. Probation Office for the treatment for drug and/or alcohol abuse which will include testing to determine if the defendant has reverted to substance abuse.

X The defendant shall participate in an outpatient mental health program as directed by the Probation Officer.

— The defendant shall participate in the Community Service Program operated by the Court Community Service, Inc., in conjunction with the U.S. Probation Office. The defendant shall perform _____ Hours of community service without compensation at a rate of _____ Hours per year. At time of referral to the program, the defendant shall make a payment of $150.00 payable to the Court Community Service, Inc. to cover administrative costs.

X The defendant shall continue to pay child support obligation as ordered. The defendant shall have no contact with his ex-wife, except for custodial arrangements

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A ☒ **special assessment of $_650.00_ is due in full immediately on count(s) _One through Eight_;**

B ☐ Lump sum payment of $_____ due immediately, balance due

- ☐ not later than _____, or
- ☐ in accordance with ____C, ____D, or ____E below; or

C ☐ Payment to begin immediately (may be combined with ____C, ____D, or ____E below); or

D ☐ payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of $_____ over a period of _____ (e.g., months or year), to commence _____ (e.g., 30 or 60 days) after the date of This judgment; or

E ☐ Payment in payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of $_____ over a period of _____ (e.g., months or year), to commence _____ (e.g., 30 or 60 days) after release From imprisonment to a term of supervision; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

PAYMENT IS TO BE MADE PAYABLE AND SENT TO THE CLERK, U.S. DISTRICT COURT.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are to be made as directed by the court, the probation officer, or the United States attorney.

☐ Joint and Several

Defendant Name, Case Number, and Joint and Several Amount:

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest,

(4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

STATEMENT OF REASONS

☐ The Court adopts the factual findings and guideline application in the presentence report.

OR

☒ **The Court adopts the factual findings and guideline application in the presentence report except**: The total offense level was determined to be 14 and the criminal history was determined to be II.

Guideline Range Determined by the Court:

Total Offense Level:	14
Criminal History Category	II
Imprisonment Range:	18-24 months
Supervised Release Range:	2 years
Fine Range:	$2,000 - $20,000

☒ **Fine waived or below the guideline range because of inability to pay.**

Total amount of Restitution: Has been paid

☐ Discretionary restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. § 3663(a)(B)(ii) (or in the offenses committed before April 23, 1996, pursuant to 18 U.S.C. § 3663(d)).

☐ Restitution pursuant to the mandatory victim restitution provisions is not ordered in this title 18 property offense because the number of identifiable victims is so large as to make restitution impracticable, pursuant to 18 U.S.C. § 3663A(c)(3)(A).

☐ Restitution pursuant to the mandatory victim restitution provisions is not ordered in this title 18 property offense because determining complex issues of fact and related to the cause of amount of the victim's losses would complicate or prolong The sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the Sentencing process, pursuant to 18 U.S.C. § 3663A(c)(3)(B).

☐ For offenses committed on or after September 13, 1994 but before April 23, 1996 that require that total amount of loss to be stated, pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic Circumstances of the defendant do not allow for the payment of any amount of restitution order, and do not allow for The payment of any or some portion of a restitution order in the foreseeable future under any reasonable schedule of Payments.

☒ **The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.**

OR

☐ The sentence is with the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

☐ The sentence departs from the guideline range:

☐ upon motion of the government, as result of defendant's substantial assistance.